



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8 2007 APR - 0

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2007 APR -9 PM 12:34

ELI REGION VIII HEARING OF ERM

DOCKET NO.: SDWA-08-2006-0055

IN THE MATTER OF:

L & L IMPLEMENT COMPANY, INC.

704 East 8th Avenue
Yuma, Colorado 80759

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 6th Day of April, 2007

Elyana B. Sutin

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Docket No. SDWA-08-2006-0055

IN THE MATTER OF:

L & L Implement Company, Incorporated
704 East 8th Avenue
Yuma, Colorado 80759

Respondent.

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency Region 8 (EPA), and Respondent, L & L Implement Company, Incorporated (Respondent), by their undersigned representatives, hereby consent and agree as follows.

BACKGROUND

1. On August 29, 2006, EPA issued to Respondent and filed with the Regional Hearing Clerk a Complaint with Notice of Opportunity for Hearing (Complaint) alleging violations of Part C of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c) *et seq.* (SDWA or the Act), and the implementing regulations relating to underground injection control (UIC) program.
2. The Complaint alleges that Respondent violated: (a) 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V disposal system at Respondent's business located at 36535 Highway 385, Wray, Colorado 80758 (the System), which through injection activity may allow the movement of fluid containing any contaminant into underground sources of drinking water; and (b) 40 C.F.R. §§

144.12(a) and 144.88(b) by failing to close or retrofit the System in a manner that would keep contaminants from entering any underground source of drinking water.

3. For purposes of the Complaint, including calculation of a proposed civil penalty, EPA considered the period of violation to be between July 17, 2004 and May 8, 2006.
4. According to information submitted by Respondent, the System has now been permanently closed.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.
6. Without admitting or denying the factual allegations contained in the Complaint, Respondent consents to the terms of this consent agreement, but neither admits nor denies the remaining allegations, including the findings and the alleged violations.
7. Respondent waives its right to contest any issue of law or fact set forth in the Complaint and knowingly agrees to waive its right to a hearing on this matter under section 1423(c)(3)(a) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(a), and to appeal this matter under section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6).
8. Respondent has demonstrated to the satisfaction of EPA that Respondent has achieved compliance with the requirements that formed the basis of the allegations in the Complaint.
9. Respondent has provided information to EPA showing that Respondent is now in compliance with each of the relevant provisions of the Act.

CIVIL PENALTY

10. To resolve this matter, the parties agree to a settlement requiring the payment by Respondent of a civil penalty of five thousand dollars (\$ 5,000.00). EPA believes the settlement amount is reasonable taking into consideration the statutory factors in section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(a), and Respondent's agreement to perform the supplemental environmental project described in detail in the section below.
11. The penalty specified in the paragraph above represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
12. Not more than thirty (30) calendar days after the date of the signed final order in this matter, Respondent shall submit a cashier's or certified check in the amount of amount of five thousand dollars (\$ 5,000.00), payable to "Treasurer, United States of America" to:

EPA - Region 8
Regional Hearing Clerk
Post Office Box 360859
Pittsburgh, Pennsylvania 15251.

13. A copy of the check shall be simultaneously mailed to the following addressees:

Tina Artemis, Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
1595 Wynkoop
Denver, Colorado 80202-1129

and

Charles Figur, Senior Enforcement Attorney
EPA Region 8 (8ENF-L)
1595 Wynkoop
Denver, Colorado 80202-1129.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

14. Respondent shall undertake the following supplemental environmental project (SEP).
The parties agree the SEP is intended to secure significant environmental or public health protection and improvements.
15. Within thirty (30) days of receipt of the final order, Respondent shall have deposited into the Jefferson County Local Emergency Planning Committee (Jefferson County LEPC) bank account twenty five thousand dollars (\$25,000.00).
16. Within ninety (90) days of receipt of the final order, the Yuma Local Emergency Planning Committee (Yuma LEPC) must submit receipts showing the purchase of equipment and training, as described more fully below, to the Jefferson County LEPC, and the Jefferson County LEPC must reimburse the Yuma LEPC for qualified equipment and training expenditures as follows. (a) Reimbursement of the Yuma LEPC for the training described in paragraph 18 below shall be no more than one thousand five hundred dollars (\$ 1,500.00). (b) Reimbursement of the Yuma LEPC for the equipment described in paragraphs 17, 19, and 20 below shall be not less than \$25,000.00 minus the actual amount the Yuma LEPC is reimbursed for cost of training pursuant to (a) above).
17. The Yuma LEPC shall purchase communication and computer equipment for its incident command vehicle presently estimated to cost approximately thirteen thousand five hundred dollars (\$13,500.00).
18. The Yuma LEPC shall purchase and have completed within ninety (90) days of receipt of the final order incident command training relating directly to the communication and

- computer equipment purchased, as well as other appropriate matters. This training is presently estimated to cost approximately one thousand five hundred dollars (\$ 1,500.00).
19. The Yuma LEPC shall purchase hydraulic pumps that will ensure their rescue equipment is fully functional at all times, including in an emergency. The total cost for these pumps is presently estimated at approximately five thousand dollars (\$ 5,000.00).
 20. The Yuma LEPC shall purchase specialized foam and foam equipment designed specifically for use at ethanol production plants. Construction of at least two ethanol production plants is planned within the response area of the Yuma LEPC. The total cost for foam and foam equipment is presently estimated at approximately five thousand dollars (\$ 5,000.00).
 21. Within one hundred and twenty (120) days of receipt of the final order, or within thirty (30) days of the date Respondent submits its federal tax reports for the calendar year in which the SEP is completed, whichever is later, Respondent shall provide Complainant with a report and all supporting document documentation (final report) of: (a) the deposit of twenty five thousand dollars with the Jefferson County LEPC; (b) each qualified purchase of equipment or training, particularly invoices showing payment by the Yuma LEPC; (c) the reimbursement of the Yuma LEPC from the account of the Jefferson County LEPC specifically from the funds deposited by Respondent; and (d) the certification required in paragraph 35 below.
 22. A responsible official of Respondent must certify under penalty of law that the information contained in the final report is true, accurate, complete, and not misleading by signing the final report and including the following statement in the final report:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

23. The final report must be mailed to the EPA addressees noted in paragraph 12.
24. Respondent hereby certifies that, as of the date of this consent agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
25. Whether Respondent has complied with the terms of this consent agreement through implementation of the SEP as described herein shall be the sole determination of EPA.
26. EPA will either: accept the final report; notify Respondent in writing of deficiencies in the final report and give Respondent an additional thirty (30) days in which to correct any deficiencies; or reject the final report and seek stipulated penalties pursuant to the stipulated penalty provisions below.
27. In the event that Respondent fails to comply with any of the terms of this consent agreement relating to the performance of the SEP, other than the actual expenditures not meeting or exceeding the amounts set forth above, a stipulated penalty of twenty five thousand dollars (\$25,000.00) shall become immediately due and owing.

28. To the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in above, Respondent shall pay a stipulated penalty equal to the amount of SEP monies not expended, plus one thousand dollars (\$ 1,000.00).
29. Stipulated penalties shall begin to accrue on the day after performance is due.
30. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 12 above.
31. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest, therefore, will begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of twelve (12) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
4 C.F.R. §§ 102.13(d) and (e).
32. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

33. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language. "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Safe Drinking Water Act."
34. This consent agreement shall not be construed to constitute EPA approval of the equipment or technology purchased by Respondent in compliance with the SEP requirements
35. Respondent hereby agrees that any funds expended in the performance of the SEP shall not be deductible as a business expense for purposes of federal taxes.
36. Respondent hereby agrees that, within thirty (30) days of the date it submits its federal tax returns for the calendar year in which the above-identified SEP is completed, it will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from federal taxes.

GENERAL PROVISIONS

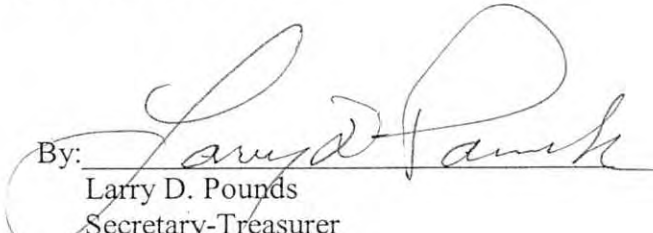
37. This consent agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns.
38. This consent agreement contains all the terms of the settlement agreed to by the parties.
39. Nothing in this consent agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.
40. Failure by Respondent to comply with any of the terms of this consent agreement shall constitute a breach of the agreement and may result in referral of the matter to the

Department of Justice for enforcement of this consent agreement and for such other relief as may be appropriate.

41. Nothing in this consent agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.
42. Each party shall bear its own costs and attorneys fees in connection with this matter.
43. The parties agree to submit this Consent agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
44. This Consent agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

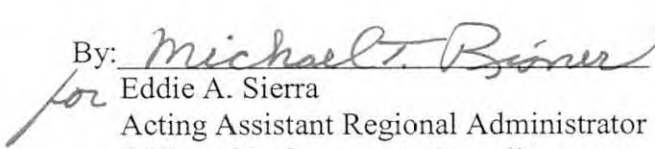
L & L IMPLEMENT COMPANY, INCORPORATED
Respondent

Date: 3-27-07

By: 
Larry D. Pounds
Secretary-Treasurer

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8
Complainant

Date: 3/30/07

By: 
for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **L & L IMPLEMENT, CO., INC.**, **DOCKET NO.: SDWA-08-2006-0055** was filed with the Regional Hearing Clerk on April 9, 2007.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Chuck Figur, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1199 True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on April 9, 2007, to:

Timothy R. Gablehouse
Gablehouse, Caulkins and Granberg, LLC.
410 17th Street, Suite 1375
Denver, CO 80202

And hand-carried to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. Environmental Protection Agency
1595 Wynkoop Street (8RC)
Denver, CO 80202-1199

April 9, 2007


Tina Artemis
Paralegal/Regional Hearing Clerk



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